

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC.,

No. C 10-03561 WHA

Plaintiff,

v.

GOOGLE INC.,

Defendant.

**ORDER REGARDING  
PRÉCIS REQUEST TO FILE  
DAUBERT MOTION  
CONCERNING SECOND  
DAMAGES REPORT**

Google Inc. requests leave “to file a *Daubert* motion on certain aspects of the revised damages report of Oracle’s damages expert Dr. Iain Cockburn” (Dkt. No. 450). At the hearing on Google’s summary judgment motion regarding the copyright claim, Google was instructed that its arguments to disqualify Dr. Cockburn’s second damages study should be raised as one of Google’s motions *in limine* (Dkt. No. 445 at 67). Google, however, now “seeks leave to file this *Daubert* motion separately, rather than as one of its five motions *in limine*, largely because of timing” (Dkt. No. 450 at 3). Specifically, “Google asks for a briefing schedule allowing Google to file its motion after Cockburn’s deposition, which will follow his reply report, now due on October 10” and which “would allow the Court to resolve this issue before a December 2011 damages trial” (*ibid.*).

Oracle America, Inc. opposes Google’s request (Dkt. No. 452). After the parties served their motions *in limine*, Oracle reported that one of Google’s motions *in limine* raised Oracle’s proposed critiques of the damages report, supposedly rendering Google’s précis request moot

1 (Dkt. No. 463). In response, Google explained that the motion *in limine* was intended to preserve  
2 its challenges, and that a later schedule for briefing and hearing its *Daubert* motion was still  
3 preferable (Dkt. No. 469).

4 Having considered the submissions from both sides, Google's request is **GRANTED IN**  
5 **PART AND DENIED IN PART**. Google's *Daubert* motion directed at the revised damages study will  
6 count as one of its motions *in limine*. The motion, however, need not be resolved at the final  
7 pretrial conference on October 17. Supplemental briefing on the motion will be allowed as  
8 follows. On **OCTOBER 20, 2011**, Google may file a supplemental brief based on Dr. Cockburn's  
9 reply report and deposition. On **OCTOBER 27, 2011**, Oracle may file a responsive supplemental  
10 brief. Each supplemental brief is limited to twenty pages, with no more than two hundred pages  
11 of supporting materials.

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14 **IT IS SO ORDERED.**

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16 Dated: September 27, 2011.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE